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EXAMINER	
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ART UNIT	PAPER NUMBER
3692	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/818,483	FINKELSTEIN ET AL.	
	Examiner	Art Unit	
	Susanna M. Diaz	3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 January 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *266-282* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *266-282* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This non-final Office action is responsive to the Examiner's amendment filed January 23, 2009. The first amendment filed on this day has been entered. The supplemental amendment filed on the same day has not been entered because none of the following circumstances (from 37 CFR § 1.111(a)(2)) applies:

> (2) Supplemental replies . (i) A reply that is supplemental to a reply that is in compliance with § 1.111(b) will not be entered as a matter of right except as provided in paragraph (a)(2)(ii) of this section. The Office may enter a supplemental reply if the supplemental reply is clearly limited to:
> (A) Cancellation of a claim(s);
> (B) Adoption of the examiner suggestion(s);
> (C) Placement of the application in condition for allowance;
> (D) Reply to an Office requirement made after the first reply was filed;
> (E) Correction of informalities (e.g., typographical errors); or
> (F) Simplification of issues for appeal.
>
> Please see MPEP § 714.03(a).

Claims 266-282 (the earlier version filed on January 23, 2009) are presented for examination.

New rejections and a new claim objection are found below.

Claim Objections

2. Claim 276 is objected to because of the following informalities:

There appears to be a typographical error in line 1 of claim 276 since "wherein" is recited twice in a row.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 266-273 and 282 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

A claimed process is eligible for patent protection under 35 U.S.C. § 101 if:

> "(1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. See Benson, 409 U.S. at 70 ('Transformation and reduction of an article 'to a different state or thing' is the clue to the patentability of a process claim that does not include particular machines.'); Diehr, 450 U.S. at 192 (holding that use of mathematical formula in process 'transforming or reducing an article to a different state or thing' constitutes patent-eligible subject matter); see also Flook, 437 U.S. at 589 n.9 ('An argument can be made [that the Supreme] Court has only recognized a process as within the statutory definition when it either was tied to a particular apparatus or operated to change materials to a 'different state or thing' '); Cochrane v. Deener, 94 U.S. 780, 788 (1876) ('A process is...an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing.').[7] A claimed process involving a fundamental principle that uses a particular machine or apparatus would not pre-empt uses of the principle that do not also use the specified machine or apparatus in the manner claimed. And a claimed process that transforms a particular article to a specified different state or thing by applying a fundamental principle would not pre-empt the use of the principle to transform any other article, to transform the same article but in a manner not covered by the claim, or to do anything other than transform the specified article." (*In re Bilski, 88 USPQ2d 1385, 1391 (Fed. Cir. 2008))*

Also noted in *Bilski* is the statement, "Process claim that recites fundamental principle, and that otherwise fails 'machine-or-transformation' test for whether such claim is drawn to patentable subject matter under 35 U.S.C. §101, is not rendered patent eligible by mere field-of-use limitations; another corollary to machine-or-transformation test is that recitation of specific machine or particular transformation of specific article does not transform unpatentable principle into patentable process if recited machine or transformation constitutes mere 'insignificant post-solution activity.'" (*In re Bilski, 88 USPQ2d 1385, 1385 (Fed. Cir. 2008))* Examples of insignificant post-solution activity include data gathering and outputting. Furthermore, the machine or transformation must impose meaningful limits on the scope of the method claims in order to pass the machine-or-transformation test. Please refer to the USPTO's "Guidance for Examining Process Claims in view of *In re Bilski*" memorandum dated January 7, 2009, http://www.uspto.gov/web/offices/pac/dapp/opla/documents/bilski_guidance_memo.pdf .

It is also noted that the mere recitation of a machine in the preamble in a manner such that the machine fails to patentably limit the scope of the claim does not make the claim statutory under 35 U.S.C. § 101, as seen in the Board of Patent Appeals Informative Opinion *Ex parte Langemyr et al.* (Appeal 2008-1495), http://www.uspto.gov/web/offices/dcom/bpai/its/fd081495.pdf .

Claims 266-273 and 282 are not tied to a particular machine or apparatus nor do they transform a particular article into a different state or thing, thereby failing the machine-or-transformation test; therefore, claims 266-273 and 282 are non-statutory

under § 101. At present, claims 266-273 and 282 merely use machines for communicating data, which is insignificant extra-solution activity, particularly since the preamble of the claims envisions that actual exchange of a repurchase agreement should occur.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 267, 271, and 275 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant's specification states that "all inconsistent open negotiations are voided" (page 22, line 18 of Applicant's original specification); however, there is no clarification that "any outstanding offers" are voided as well (as recited in claims 267 and 275). An offer is not necessarily the same as a negotiation; therefore, this limitation is deemed to be new matter.

Applicant's original specification does not disclose that the repurchase agreement offer has one or more open material terms that may be supplied in a

counteroffer by the offeree and the offerree and the offeror supply the open material terms by way of the negotiating messages to negotiate a repurchase agreement contract based on the repurchase agreement offer, as recited in claim 271. Therefore, the limitations regarding "open material terms" are deemed to be new matter.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 266-282 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claim 266 presents the invention as a "repurchase agreement exchange method" (in the preamble); however, no exchange ever occurs within the body of claim 266 or any of the dependent claims. The bodies of these claims do not carry out what the preamble set out to accomplish, thereby rendering the intended metes and bounds of the claimed invention vague and indefinite.

In the second limitation of claim 267, there is no antecedent basis for "the negotiating messages" and "the automated trading system."

In claim 267, the "automated trading system" is "arranged to void any outstanding offers or negotiations"; however, the "arranged to" language in a method claim is equivalent to "may" or "capable of," which fails to positively recite the function.

Claim 268 recites that "the repurchase agreement offer proposes to obligate..." It is not clear to which repurchase agreement offer reference is being made. There are

multiple offers displayed in claim 266, but a specific repurchase agreement offer is not defined.

There is no antecedent basis for "the automated trading system" recited in line 2 of claim 269.

Claim 271 recites that the open material terms "may be supplied," which means that the terms may also not be supplied within the scope of the claim. This limitation is not positively recited, thereby rendering the claim scope vague and indefinite.

There is no antecedent basis for "the automated trading system" recited in line 2 of claim 273.

Claim 274 is an apparatus claim that recites that "each of said trading terminals presents a hierarchical list of repurchase agreement opportunities" and "a user at a trading terminal can select one of said repurchase agreement opportunities and communicate directly with a potential repurchase agreement counterparty about the respective repurchase agreement opportunity." An apparatus is defined by its structural elements and any corresponding functionality (that the structural elements are programmed to/configured to perform); however, the aforementioned limitations attempt to define the claim by positively recited functionality (it is noted that the "can" language is not truly a positive recitation of the functionality, but it conveys a potential process type of step nonetheless). Claim 275 also positively recites the method step of "is arranged to void..." Claim 276 recites the method step of "proposes to obligate." Claim 277 recites the method step of "making available." Each of claims 278-281 recites the method step of "is arranged." MPEP § 2173.05(p) states, "A single claim which claims

both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph. *> *IPXL Holdings v. Amazon.com, Inc., 430 F.2d 1377, 1384, 77 USPQ2d 1140, 1145 (Fed. Cir. 2005);<Ex parte Lyell, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990)* *>(< claim directed to an automatic transmission workstand and the method * of using it * held ** ambiguous and properly rejected under 35 U.S.C. 112, second paragraph>)<." Claim 274 and dependent claims 275-281 recite both apparatus and method steps of using the apparatus and are therefore indefinite under 35 U.S.C. § 112, 2nd paragraph.

Independent claim 282 presents the invention as a "repurchase agreement exchange method" (in the preamble); however, no exchange ever occurs within the body of the claim. The body of the claim does not carry out what the preamble set out to accomplish, thereby rendering the intended metes and bounds of the claimed invention vague and indefinite.

In claim 282, it is not clear if the "at least one of an existing repurchase agreement" is one of the displayed list of offers for repurchase agreements of securities or if it is a distinct repurchase agreement that has already been exchanged and/or negotiated, thereby rendering the claim vague and indefinite.

There is no antecedent basis for "the securities that are subject of the offer" recited in line 2 of claim 275.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 266-272 and 282 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foley et al. (U.S. Patent No. 7,475,046) in view of "Repo" (Anonymous. "Repo." *Euromoney*, pages 24-27, July 1994) and further in view of "Equity Derivatives" (Anonymous. "Equity Derivatives." *Euromoney: The 1998 Guide to Portugal*, London, page 16+, September 1998).

[Claim 266] Foley discloses a securities exchange method comprising:

providing a plurality of user terminals, each displaying a list of offers for securities (Figs. 1, 8-9; col. 4, lines 18-36; col. 7, lines 44-53 – The first participant may select an offer or offers to negotiate),

receiving from a user terminal a user entry portion for defining potential terms (Figs. 8-10; col. 7, line 44 through col. 8, line 65 – The first participant/negotiation initiators and counter-offerors may send messages back and forth to negotiate terms of the transaction), and

communicating with a potential counterparty, based on an identification of a respective offer, through a negotiation communications interface (Figs. 8-10; col. 7, line 44 through col. 8, line 65 -- The first participant/negotiation initiators and counter-offerors may send messages back and forth to negotiate terms of the transaction).

Foley does not explicitly disclose that the exchanged securities are repurchase agreements and the potential terms are terms of a repurchase agreement. "Repo" discloses that a "repurchase agreement ('repo') is the generic term for a transaction where one market player, the seller, who owns the securities, temporarily transfers them to a counterparty, the purchase, in exchange for the cash value of the marked-to-market securities. At the end of the transaction (one year later at the most) the securities are returned to the seller and the cash is returned with interest to the purchaser." ("Repo": Page 24, Column 1) In other words, repurchase agreements are treated as securities transactions. Furthermore, "Equity Derivatives" discusses how a repo market was created on the Oporto Derivatives Exchange ("Equity Derivatives": ¶ 1) and repurchase agreements may be handled via an automatic repo trading system ("Equity Derivatives": ¶ 7). Since Foley's invention handles negotiations for traded commodities, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Foley's electronic trading system to exchange securities that include repurchase agreements and the negotiated potential terms are terms of a repurchase agreement, thereby rendering Foley's invention more marketable to a wider range of participants by enabling Foley to handle a larger variety of securities. It is further noted that the recited manipulative steps and structural elements are not significantly affected by the type of securities exchanged. Electronic trading systems for negotiations and for handling repurchase agreements both existed at the time of Applicant's invention. Modifying Foley to handle repurchase agreement-related

securities instead of (or in addition to) typical stocks amounts to a mere substitution of known components and one of ordinary skill in the art at the time of Applicant's invention possessed the technical ability to substitute these components as claimed and the result of the substitution was also predictable. Furthermore, as seen in "Repo" and "Equity Derivatives," the financial markets were, prior to Applicant's invention, already changing to accommodate repurchase agreement securities in certain markets and through automated repo trading systems. Therefore, the historical market forces would have prompted change of automated trading systems, such as the one disclosed by Foley, to accommodate growing markets, such as repurchase agreement securities markets.

[Claim 267] The rejection of claim 266 is incorporated by reference as it applies to claim 267. Furthermore, Foley discloses:

the securities that are subject of the offer being two or more securities issues from among which the offeree may choose one or more (Figs. 1, 8-9; col. 4, lines 18-36; col. 7, lines 44-53 – The first participant may select an offer or offers to negotiate); and

the negotiating messages include a selection from among the two or more offered securities that are to be the subject of the securities contract (Figs. 1, 8-9; col. 4, lines 18-36; col. 7, lines 44-53 – The first participant may select an offer or offers to negotiate), the automated trading system arranged to void any outstanding offers or negotiations on agreement of the offeror and offeree (col. 8, lines 22-28 – "stale negotiations may be cancelled as expired").

Foley does not explicitly disclose that the exchanged securities are repurchase agreements. "Repo" discloses that a "repurchase agreement ('repo') is the generic term for a transaction where one market player, the seller, who owns the securities, temporarily transfers them to a counterparty, the purchase, in exchange for the cash value of the marked-to-market securities. At the end of the transaction (one year later at the most) the securities are returned to the seller and the cash is returned with interest to the purchaser." ("Repo": Page 24, Column 1) In other words, repurchase agreements are treated as securities transactions. Furthermore, "Equity Derivatives" discusses how a repo market was created on the Oporto Derivatives Exchange ("Equity Derivatives": ¶ 1) and repurchase agreements may be handled via an automatic repo trading system ("Equity Derivatives": ¶ 7). Since Foley's invention handles negotiations for traded commodities, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Foley's electronic trading system to exchange securities that include repurchase agreements, thereby rendering Foley's invention more marketable to a wider range of participants by enabling Foley to handle a larger variety of securities. It is further noted that the recited manipulative steps and structural elements are not significantly affected by the type of securities exchanged. Electronic trading systems for negotiations and for handling repurchase agreements both existed at the time of Applicant's invention. Modifying Foley to handle repurchase agreement-related securities instead of (or in addition to) typical stocks amounts to a mere substitution of known components and one of ordinary

skill in the art at the time of Applicant's invention possessed the technical ability to substitute these components as claimed and the result of the substitution was also predictable. Furthermore, as seen in “Repo” and “Equity Derivatives,” the financial markets were, prior to Applicant's invention, already changing to accommodate repurchase agreement securities in certain markets and through automated repo trading systems. Therefore, the historical market forces would have prompted change of automated trading systems, such as the one disclosed by Foley, to accommodate growing markets, such as repurchase agreement securities markets.

Additionally, the content of the offers is non-functional descriptive material and is not functionally involved in the manipulative steps of the invention nor does it alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)); In re Ngai, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP § 2106.*

[Claim 268] The rejection of claim 266 is incorporated by reference as it applies to claim 268. Foley does not explicitly disclose that the repurchase agreement offer proposes to obligate the seller to repurchase securities within a range of securities substitutable for the sold securities at the option of the buyer. However, "Repo" discloses that a "repurchase agreement ('repo') is the generic term for a transaction where one market player, the seller, who owns the securities, temporarily transfers them to a counterparty, the purchase, in exchange for the cash value of the marked-to-market securities. At the end of the transaction (one year later at the most) the securities are returned to the seller and the cash is returned with interest to the purchaser." ("Repo": Page 24, Column 1) "Repo" further explains that, "Since all repo transactions are negotiated on an OTC basis, they can be tailored to the specific needs of both counterparties: …Contractual right to substitution. This option enables counterparties in medium-term transactions (up to one month) to substitute another security for the one chosen when entering into the repo transaction. The new security is identical in value to the previous one." ("Repo": Page 26, Column 2) Since the Foley-"Repo"-"Equity Derivatives" combination addresses negotiations for repurchase agreement securities on an electronic trading system (as discussed above), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further adapt Foley's electronic trading system to exchange securities that include repurchase agreements offers that propose to obligate the seller to repurchase securities within a range of securities substitutable for the sold securities at the option of the buyer, thereby rendering Foley's invention more marketable to a wider range of

participants by enabling Foley to handle a larger variety of securities (e.g., repurchase agreements, in conformance with legal requirements). It is further noted that the recited manipulative steps and structural elements are not significantly affected by the type of securities exchanged. Electronic trading systems for negotiations and for handling repurchase agreements both existed at the time of Applicant's invention. Modifying Foley to handle repurchase agreement-related securities instead of (or in addition to) typical stocks amounts to a mere substitution of known components and one of ordinary skill in the art at the time of Applicant's invention possessed the technical ability to substitute these components as claimed and the result of the substitution was also predictable. Furthermore, as seen in “Repo” and “Equity Derivatives," the financial markets were, prior to Applicant's invention, already changing to accommodate repurchase agreement securities in certain markets and through automated repo trading systems. Therefore, the historical market forces would have prompted change of automated trading systems, such as the one disclosed by Foley, to accommodate growing markets, such as repurchase agreement securities markets.

Additionally, the content of the offers is non-functional descriptive material and is not functionally involved in the manipulative steps of the invention nor does it alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms

of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)); In re Ngai, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP § 2106.*

[Claim 269] The rejection of claim 266 is incorporated by reference as it applies to claim 269. Foley does not explicitly disclose the automated trading system controls making available the repurchase agreement offer or negotiating the repurchase agreement contract based at least in part on a preestablished master repurchase agreement between the offeror and offeree to whom the repurchase agreement offer is made available. However, "Repo" discloses that a master agreement establishes the legal framework governing how repurchase agreements are handled ("Repo": Page 27, Column 1, "Legal framework"). Since the Foley-"Repo"-"Equity Derivatives" combination addresses negotiations for repurchase agreement securities on an electronic trading system (as discussed above), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further adapt Foley's electronic trading system such that the automated trading system controls make available the repurchase agreement offer or negotiate the repurchase agreement contract based at least in part on a preestablished master repurchase agreement between the offeror and offeree to whom the repurchase agreement offer is made available, thereby rendering Foley's invention more marketable

to a wider range of participants by enabling Foley to handle a larger variety of securities (e.g., repurchase agreements, in conformance with legal requirements). It is further noted that the recited manipulative steps and structural elements are not significantly affected by the type of securities exchanged. Electronic trading systems for negotiations and for handling repurchase agreements both existed at the time of Applicant's invention. Modifying Foley to handle repurchase agreement-related securities instead of (or in addition to) typical stocks amounts to a mere substitution of known components and one of ordinary skill in the art at the time of Applicant's invention possessed the technical ability to substitute these components as claimed and the result of the substitution was also predictable. Furthermore, as seen in “Repo” and “Equity Derivatives," the financial markets were, prior to Applicant's invention, already changing to accommodate repurchase agreement securities in certain markets and through automated repo trading systems. Therefore, the historical market forces would have prompted change of automated trading systems, such as the one disclosed by Foley, to accommodate growing markets, such as repurchase agreement securities markets.

Additionally, the content of the offers is non-functional descriptive material and is not functionally involved in the manipulative steps of the invention nor does it alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this

descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)); In re Ngai, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP § 2106.*

[Claim 270] The rejection of claim 266 is incorporated by reference as it applies to claim 270. Foley does not explicitly disclose that the repurchase agreement offer proposes to obligate the seller to a short sale of securities. However, "Repo" discloses that "Repo transactions involving specific issues ('specials') are used to ensure delivery against a short sale of that security" ("Repo": Page 25, Column 1) and the conditions of the repurchased securities imply an obligation to meet these established conditions ("Repo": Page 26, Column 2). Since the Foley-"Repo"-"Equity Derivatives" combination addresses negotiations for repurchase agreement securities on an electronic trading system (as discussed above), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further adapt Foley's electronic trading system such that the repurchase agreement offer proposes to obligate the seller to a short sale of securities, thereby rendering Foley's invention more marketable to a wider range of participants by enabling Foley to handle a larger variety of securities (e.g., repurchase agreements, in conformance with legal requirements). It is further noted that the recited manipulative steps and structural elements are not

significantly affected by the type of securities exchanged. Electronic trading systems for negotiations and for handling repurchase agreements both existed at the time of Applicant's invention. Modifying Foley to handle repurchase agreement-related securities instead of (or in addition to) typical stocks amounts to a mere substitution of known components and one of ordinary skill in the art at the time of Applicant's invention possessed the technical ability to substitute these components as claimed and the result of the substitution was also predictable. Furthermore, as seen in “Repo” and “Equity Derivatives," the financial markets were, prior to Applicant's invention, already changing to accommodate repurchase agreement securities in certain markets and through automated repo trading systems. Therefore, the historical market forces would have prompted change of automated trading systems, such as the one disclosed by Foley, to accommodate growing markets, such as repurchase agreement securities markets.

Additionally, the content of the offers is non-functional descriptive material and is not functionally involved in the manipulative steps of the invention nor does it alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, *see In re Gulack, 703*

F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)); In re Ngai, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP § 2106.

[Claim 271] The rejection of claim 266 is incorporated by reference as it applies to claim 271. Furthermore, Foley discloses:

the offer has one or more open material terms that may be supplied in a counteroffer by the offeree (Figs. 8-10; col. 7, line 44 through col. 8, line 65 -- The first participant/negotiation initiators and counter-offerors may send messages back and forth to negotiate terms of the transaction); and

the offeree and the offeror supply the open material terms by way of the negotiating messages to negotiate a contract based on the offer (Figs. 8-10; col. 7, line 44 through col. 8, line 65 -- The first participant/negotiation initiators and counter-offerors may send messages back and forth to negotiate terms of the transaction).

Foley does not explicitly disclose that the exchanged securities are repurchase agreements and the potential terms are terms of a repurchase agreement. "Repo" discloses that a "repurchase agreement ('repo') is the generic term for a transaction where one market player, the seller, who owns the securities, temporarily transfers them to a counterparty, the purchase, in exchange for the cash value of the marked-to-market securities. At the end of the transaction (one year later at the most) the securities are returned to the seller and the cash is returned with interest to the purchaser." ("Repo":

Page 24, Column 1) In other words, repurchase agreements are treated as securities transactions. Furthermore, "Equity Derivatives" discusses how a repo market was created on the Oporto Derivatives Exchange ("Equity Derivatives": ¶ 1) and repurchase agreements may be handled via an automatic repo trading system ("Equity Derivatives": ¶ 7). Since Foley's invention handles negotiations for traded commodities, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Foley's electronic trading system to exchange securities that include repurchase agreements and the negotiated potential terms are terms of a repurchase agreement, thereby rendering Foley's invention more marketable to a wider range of participants by enabling Foley to handle a larger variety of securities. It is further noted that the recited manipulative steps and structural elements are not significantly affected by the type of securities exchanged. Electronic trading systems for negotiations and for handling repurchase agreements both existed at the time of Applicant's invention. Modifying Foley to handle repurchase agreement-related securities instead of (or in addition to) typical stocks amounts to a mere substitution of known components and one of ordinary skill in the art at the time of Applicant's invention possessed the technical ability to substitute these components as claimed and the result of the substitution was also predictable. Furthermore, as seen in "Repo" and "Equity Derivatives," the financial markets were, prior to Applicant's invention, already changing to accommodate repurchase agreement securities in certain markets and through automated repo trading systems. Therefore, the historical market forces would have prompted change of automated trading systems, such as the one disclosed by

Foley, to accommodate growing markets, such as repurchase agreement securities markets.

[Claim 272] The rejection of claim 266 is incorporated by reference as it applies to claim 272. Foley does not explicitly disclose that the sale price of the offered obligation to sell securities is at less than the market value of the offered securities. However, "Repo" discloses, "Since all repo transactions are negotiated on an OTC basis, they can be tailored to the specific needs of both counterparties: …Players can exchange a cash amount lower than the value of the repurchased securities. This contractual arrangement is known as a 'haircut,' and enables players to partly neutralize the risk of price fluctuations in the underlyer." ("Repo": Page 26, Column 2) Since the Foley-"Repo"-"Equity Derivatives" combination addresses negotiations for repurchase agreement securities on an electronic trading system (as discussed above), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further adapt Foley's electronic trading system such that the sale price of the offered obligation to sell securities is at less than the market value of the offered securities, thereby rendering Foley's invention more marketable to a wider range of participants by enabling Foley to handle a larger variety of securities (e.g., repurchase agreements, in conformance with legal requirements) while enabling trading parties to "partly neutralize the risk of price fluctuations in the underlyer" (as suggested by "Repo": Page 26, Column 2). It is further noted that the recited manipulative steps and structural elements are not significantly affected by the type of

securities exchanged. Electronic trading systems for negotiations and for handling repurchase agreements both existed at the time of Applicant's invention. Modifying Foley to handle repurchase agreement-related securities instead of (or in addition to) typical stocks amounts to a mere substitution of known components and one of ordinary skill in the art at the time of Applicant's invention possessed the technical ability to substitute these components as claimed and the result of the substitution was also predictable. Furthermore, as seen in “Repo” and “Equity Derivatives," the financial markets were, prior to Applicant's invention, already changing to accommodate repurchase agreement securities in certain markets and through automated repo trading systems. Therefore, the historical market forces would have prompted change of automated trading systems, such as the one disclosed by Foley, to accommodate growing markets, such as repurchase agreement securities markets.

[Claim 282] Foley discloses a securities exchange method comprising:

providing a plurality of user terminals, each displaying a list of offers for securities (Figs. 1, 8-9; col. 4, lines 18-36; col. 7, lines 44-53 – The first participant may select an offer or offers to negotiate),

receiving from a user terminal a user entry portion for defining potential terms (Figs. 8-10; col. 7, line 44 through col. 8, line 65 – The first participant/negotiation initiators and counter-offerors may send messages back and forth to negotiate terms of the transaction), and

communicating between a party at a user terminal and a potential counterparty at another user terminal, based on a identification of a respective offer, through a negotiation communications interface (Figs. 8-10; col. 7, line 44 through col. 8, line 65 -- The first participant/negotiation initiators and counter-offerors may send messages back and forth to negotiate terms of the transaction).

Foley does not explicitly disclose that the exchanged securities are repurchase agreements and the potential terms are terms of a repurchase agreement. "Repo" discloses that a "repurchase agreement ('repo') is the generic term for a transaction where one market player, the seller, who owns the securities, temporarily transfers them to a counterparty, the purchase, in exchange for the cash value of the marked-to-market securities. At the end of the transaction (one year later at the most) the securities are returned to the seller and the cash is returned with interest to the purchaser." ("Repo": Page 24, Column 1) In other words, repurchase agreements are treated as securities transactions. Furthermore, "Equity Derivatives" discusses how a repo market was created on the Oporto Derivatives Exchange ("Equity Derivatives": ¶ 1) and repurchase agreements may be handled via an automatic repo trading system ("Equity Derivatives": ¶ 7). Since Foley's invention handles negotiations for traded commodities, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Foley's electronic trading system to exchange securities that include repurchase agreements and the negotiated potential terms are terms of a repurchase agreement, thereby rendering Foley's invention more marketable

to a wider range of participants by enabling Foley to handle a larger variety of securities. It is further noted that the recited manipulative steps and structural elements are not significantly affected by the type of securities exchanged. Electronic trading systems for negotiations and for handling repurchase agreements both existed at the time of Applicant's invention. Modifying Foley to handle repurchase agreement-related securities instead of (or in addition to) typical stocks amounts to a mere substitution of known components and one of ordinary skill in the art at the time of Applicant's invention possessed the technical ability to substitute these components as claimed and the result of the substitution was also predictable. Furthermore, as seen in “Repo” and “Equity Derivatives,” the financial markets were, prior to Applicant's invention, already changing to accommodate repurchase agreement securities in certain markets and through automated repo trading systems. Therefore, the historical market forces would have prompted change of automated trading systems, such as the one disclosed by Foley, to accommodate growing markets, such as repurchase agreement securities markets.

Foley does not explicitly disclose the steps of determining a net counterparty exposure of a party for at least one of an existing repurchase agreement and a party-counterparty pair, and indicating a compensating margin transfer for the net counterparty exposure. However, “Repo” explains, "Players can exchange a cash amount lower than the value of the repurchased securities. This contractual arrangement is known as a ‘haircut,’ and enables players to partly neutralize the risk of price fluctuation in the underlyer. Assets can also be repriced. To cover themselves

against overall counterparty risk, players can enter into a contractual repricing arrangement which enables the overall value of the assets (securities and cash) of either counterparty to be marked-to-market on either a regular or one-off-basis." ("Repo": Page 26, Column 2) These price variations (that correct for risk) are effectively compensation margins. The Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further modify the Foley-"Repo"-"Equity Derivative" combination to perform the steps of determining a net counterparty exposure of a party for at least one of an existing repurchase agreement and a party-counterparty pair, and indicating a compensating margin transfer for the net counterparty exposure in order to help "neutralize the risk of price fluctuation in the underlyer" and help protect the involved parties against overall counterparty risk (as suggested by "Repo").

11. Claims 273-281 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foley et al. (U.S. Patent No. 7,475,046) in view of "Repo" (Anonymous. "Repo." *Euromoney*, pages 24-27, July 1994) and further in view of "Equity Derivatives" (Anonymous. "Equity Derivatives." *Euromoney: The 1998 Guide to Portugal*, London, page 16+, September 1998), as applied to claim 266 above, and further in view of Woolston (US 2005/0262005).

[Claim 273] The rejection of claim 266 is incorporated by reference as it applies to claim 273. Neither Foley, "Repo", nor "Equity Derivatives" explicitly discloses that the automated trading system provides the capability to display the repurchase agreement

offers to the offerees in a tree format and to permit respective offerees to select repurchase agreement offers of interest. However, Woolston discloses that bid/ask information may be better organized and displayed to users in a hierarchical tree format that is more conveniently navigable so that data of interest can be more easily located (Fig. 4; ¶¶ 2, 10, 22, 23). Since Foley discloses an interface that presents available offers to users (Fig. 1, 8-9; col. 4, lines 18-36; col. 7, lines 44-53 – The first participant may select an offer or offers to negotiate), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further modify the Foley-"Repo"-"Equity Derivatives" combination such that the automated trading system provides the capability to display the repurchase agreement offers to the offerees in a tree format and to permit respective offerees to select repurchase agreement offers of interest in order to present offer information in a better organized format that is more conveniently navigable so that data of interest can be more easily located.

[Claims 274, 278-281] Foley discloses a securities exchange method comprising:

(a) a plurality of trading terminals, each having a user interface comprising a display and keyboard (Figs. 1, 6-19; col. 4, lines 31-36);

(b) a central processor, for establishing communications between said trading terminals (Fig. 1; col. 4, lines 18-36);

wherein a user at a trading terminal can select one of said repurchase agreement opportunities and communicate directly with a potential repurchase agreement

counterparty above the respective repurchase agreement opportunity (Figs. 8-10; col. 7, line 44 through col. 8, line 65 – The first participant/negotiation initiators and counter-offerors may send messages back and forth to negotiate terms of the transaction).

Foley does not explicitly disclose that the exchanged securities are repurchase agreements and the potential terms are terms of a repurchase agreement. "Repo" discloses that a "repurchase agreement ('repo') is the generic term for a transaction where one market player, the seller, who owns the securities, temporarily transfers them to a counterparty, the purchase, in exchange for the cash value of the marked-to-market securities. At the end of the transaction (one year later at the most) the securities are returned to the seller and the cash is returned with interest to the purchaser." ("Repo": Page 24, Column 1) In other words, repurchase agreements are treated as securities transactions. Furthermore, "Equity Derivatives" discusses how a repo market was created on the Oporto Derivatives Exchange ("Equity Derivatives": ¶ 1) and repurchase agreements may be handled via an automatic repo trading system ("Equity Derivatives": ¶ 7). Since Foley's invention handles negotiations for traded commodities, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Foley's electronic trading system to exchange securities that include repurchase agreements and the negotiated potential terms are terms of a repurchase agreement, thereby rendering Foley's invention more marketable to a wider range of participants by enabling Foley to handle a larger variety of securities. It is further noted that the recited manipulative steps and structural elements are not

significantly affected by the type of securities exchanged. Electronic trading systems for negotiations and for handling repurchase agreements both existed at the time of Applicant's invention. Modifying Foley to handle repurchase agreement-related securities instead of (or in addition to) typical stocks amounts to a mere substitution of known components and one of ordinary skill in the art at the time of Applicant's invention possessed the technical ability to substitute these components as claimed and the result of the substitution was also predictable. Furthermore, as seen in "Repo" and "Equity Derivatives," the financial markets were, prior to Applicant's invention, already changing to accommodate repurchase agreement securities in certain markets and through automated repo trading systems. Therefore, the historical market forces would have prompted change of automated trading systems, such as the one disclosed by Foley, to accommodate growing markets, such as repurchase agreement securities markets.

Neither Foley, "Repo", nor "Equity Derivatives" explicitly discloses that each of the trading terminals presents a hierarchical list of repurchase agreement opportunities (claim 274), wherein a top level of the tree hierarchy is arranged by securities class (claim 278), wherein a level of the tree hierarchy is arranged by dealer name (claim 279), wherein a level of the tree hierarchy is arranged by transaction size (claim 280), wherein a level of the tree hierarchy is arranged by proximity of bid and ask (claim 281). However, Woolston discloses that bid/ask information may be better organized and displayed to users in a hierarchical tree format that is more conveniently navigable so that data of interest can be more easily located (Fig. 4; ¶¶ 2, 10, 22, 23). Since Foley

discloses an interface that presents available offers to users (Fig. 1, 8-9; col. 4, lines 18-36; col. 7, lines 44-53 – The first participant may select an offer or offers to negotiate), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further modify the Foley-"Repo"-"Equity Derivatives" combination such that each of the trading terminals presents a hierarchical list of repurchase agreement opportunities (claim 274), wherein a top level of the tree hierarchy is arranged by securities class (claim 278), wherein a level of the tree hierarchy is arranged by dealer name (claim 279), wherein a level of the tree hierarchy is arranged by transaction size (claim 280), wherein a level of the tree hierarchy is arranged by proximity of bid and ask (claim 281) in order to present offer information in a better organized format that is more conveniently navigable so that data of interest can be more easily located based on a particular topic of interest (e.g., by securities class, dealer name, transaction size, proximity of bid and ask). Woolston allows for topical and sub-topical classification within the navigational tree; therefore, the Examiner submits that Woolston sets forth the technology for hierarchically categorizing information based on any type of topic. Consequently, one of ordinary skill in the art at the time of Applicant's invention would have known that the combination of Woolston with the Foley-"Repo"-"Equity Derivatives" combination would have preserved the separate operability of each reference within the overall combination while yielding expected results when using Woolston's hierarchical taxonomy to display data deemed important in Foley (e.g., Fig. 7 of Foley shows best bids/best offers, which implies a

proximity of bid and ask, and Figs. 6-9 of Foley show securities class, dealer name, and transaction size).

[Claim 275] The rejection of claim 274 is incorporated by reference as it applies to claim 275. Furthermore, Foley discloses:

the securities that are subject of the offer being two or more securities issues from among which the offeree may choose one or more (Fig. 1, 8-9; col. 4, lines 18-36; col. 7, lines 44-53 – The first participant may select an offer or offers to negotiate); and

the automated trading system is arranged to void any outstanding offers or negotiations on agreement of the offeree and the offeror (Fig. 1, 8-9; col. 4, lines 18-36; col. 7, lines 44-53 – The first participant may select an offer or offers to negotiate), the automated trading system arranged to void any outstanding offers or negotiations on agreement of the offeror and offeree (col. 8, lines 22-28 – "stale negotiations may be cancelled as expired").

Additionally, the content of the offers is non-functional descriptive material and is not functionally involved in the manipulative steps of the invention nor does it alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms

of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)); In re Ngai, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP § 2106.*

[Claim 276] The rejection of claim 274 is incorporated by reference as it applies to claim 276. Foley does not explicitly disclose that the repurchase agreement offer proposes to obligate the seller to repurchase securities within a range of securities substitutable for the sold securities at the option of the buyer. However, "Repo" discloses that a "repurchase agreement ('repo') is the generic term for a transaction where one market player, the seller, who owns the securities, temporarily transfers them to a counterparty, the purchase, in exchange for the cash value of the marked-to-market securities. At the end of the transaction (one year later at the most) the securities are returned to the seller and the cash is returned with interest to the purchaser." ("Repo": Page 24, Column 1) "Repo" further explains that, "Since all repo transactions are negotiated on an OTC basis, they can be tailored to the specific needs of both counterparties: …Contractual right to substitution. This option enables counterparties in medium-term transactions (up to one month) to substitute another security for the one chosen when entering into the repo transaction. The new security is identical in value to the previous one." ("Repo": Page 26, Column 2) Since the Foley-"Repo"-"Equity Derivatives" combination addresses negotiations for repurchase agreement securities

on an electronic trading system (as discussed above), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further adapt Foley's electronic trading system to exchange securities that include repurchase agreements offers that propose to obligate the seller to repurchase securities within a range of securities substitutable for the sold securities at the option of the buyer, thereby rendering Foley's invention more marketable to a wider range of participants by enabling Foley to handle a larger variety of securities (e.g., repurchase agreements, in conformance with legal requirements). It is further noted that the recited manipulative steps and structural elements are not significantly affected by the type of securities exchanged. Electronic trading systems for negotiations and for handling repurchase agreements both existed at the time of Applicant's invention. Modifying Foley to handle repurchase agreement-related securities instead of (or in addition to) typical stocks amounts to a mere substitution of known components and one of ordinary skill in the art at the time of Applicant's invention possessed the technical ability to substitute these components as claimed and the result of the substitution was also predictable. Furthermore, as seen in "Repo" and "Equity Derivatives," the financial markets were, prior to Applicant's invention, already changing to accommodate repurchase agreement securities in certain markets and through automated repo trading systems. Therefore, the historical market forces would have prompted change of automated trading systems, such as the one disclosed by Foley, to accommodate growing markets, such as repurchase agreement securities markets.

Additionally, the content of the offers is non-functional descriptive material and is not functionally involved in the manipulative steps of the invention nor does it alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)); In re Ngai, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP § 2106.*

[Claim 277] The rejection of claim 274 is incorporated by reference as it applies to claim 277. Foley does not explicitly disclose the automated trading system controls making available the repurchase agreement offer or negotiating the repurchase agreement contract based at least in part on a preestablished master repurchase agreement between the offeror and offeree to whom the repurchase agreement offer is made available. However, "Repo" discloses that a master agreement establishes the legal framework governing how repurchase agreements are handled ("Repo": Page 27, Column 1, "Legal framework"). Since the Foley-"Repo"-"Equity Derivatives" combination addresses negotiations for repurchase agreement securities on an

electronic trading system (as discussed above), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further adapt Foley's electronic trading system such that the automated trading system controls make available the repurchase agreement offer or negotiate the repurchase agreement contract based at least in part on a preestablished master repurchase agreement between the offeror and offeree to whom the repurchase agreement offer is made available, thereby rendering Foley's invention more marketable to a wider range of participants by enabling Foley to handle a larger variety of securities (e.g., repurchase agreements, in conformance with legal requirements). It is further noted that the recited manipulative steps and structural elements are not significantly affected by the type of securities exchanged. Electronic trading systems for negotiations and for handling repurchase agreements both existed at the time of Applicant's invention. Modifying Foley to handle repurchase agreement-related securities instead of (or in addition to) typical stocks amounts to a mere substitution of known components and one of ordinary skill in the art at the time of Applicant's invention possessed the technical ability to substitute these components as claimed and the result of the substitution was also predictable. Furthermore, as seen in "Repo" and "Equity Derivatives," the financial markets were, prior to Applicant's invention, already changing to accommodate repurchase agreement securities in certain markets and through automated repo trading systems. Therefore, the historical market forces would have prompted change of automated trading systems, such as the one disclosed by

Foley, to accommodate growing markets, such as repurchase agreement securities markets.

Additionally, the content of the offers is non-functional descriptive material and is not functionally involved in the manipulative steps of the invention nor does it alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)); In re Ngai, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP § 2106.*

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susanna M. Diaz/
Primary Examiner, Art Unit 3692